

REMARKS

Applicant respectfully requests reconsideration of the instant application in view of the amendments, herein, and the following remarks:

The following claims are currently *pending*: 1-6 and 8-17.

The following claims are *independent*: 1 and 6.

The following claims have previously been *withdrawn*: 8-14.

The following claim has previously been *cancelled* without prejudice or disclaimer: 7.

Please *amend* claims 1 and 6; although these claims have been amended herein to provide clarification, correct typographical inaccuracies and/or informalities, and/or to better track practical/commercial implementations/practices (hereinafter “amendment,” “amendments,” and/or “amended”), Applicant submits that the originally filed claim is patentable and reserves the right to pursue the originally filed claim (as well as any claims dependent therefrom) at a later time and/or in one or more continuation/divisional application(s). Applicant submits that the claim amendments are supported throughout the originally filed specification and that no new matter has been added by way of these amendments.

Claim Rejections - 35 U.S.C. § 112

The Office Action has rejected claims 1-6 and 15-17 under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. Applicant respectfully traverses the pending rejection and submits that the noted claims all satisfy the requirements of 35 U.S.C. § 112, first paragraph.

The Examiner in the pending rejection asserts:

Applicant recites in claims 1 and 6, the limitation “...determining by the **trade implementation plug-in** and the **market-specific plug-in** an order strategy based on the plurality of trade parameters. The specification as originally filed does not provide support for this limitation. The Examiner searched the length and breadth of the applicant's specification, but failed to find a single paragraph where support for this limitation is cited. (Office Action, pgs. 2-3; original emphasis).

Applicant respectfully traverses the Examiner's assertions.

The MPEP states “[t]he subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement.” (MPEP 2163.02). Applicant submits that support for the pending claims may be found throughout the originally filed specification, abstract, drawings and claims. By way of non-limiting example only, Applicant submits the discussion on page 7, paragraph 2 to page 8, paragraph 1 of the originally filed specification provides clear and sufficient support and basis for the claim elements noted by the Examiner and should address the Examiner's request for clarification. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejections, and allowance of the claims.

Claim Rejections - 35 U.S.C. § 102

The Office Action has rejected claims 1-6 and 15-17 under 35 U.S.C. § 102(e) as being anticipated by Kane, US Patent No. 6,317,728 (hereinafter “Kane”). Applicant notes that the Examiner has improperly applied Kane to claims 1-6 and 15-17 by failing to discuss the alleged relevance of Kane to any of claims 4, 6 and 15-17. (Office Action, pgs. 3-4). Because the Examiner has improperly omitted any discussion of how Kane allegedly anticipates claims 4,

6 and 15-17, Applicant requests either allowance of these claims or thorough discussion of the alleged relevance of Kane to each of the claims with particularity as required by the MPEP.

Furthermore, Applicant respectfully traverses the rejection and submits that a showing of anticipation has not been made and that Kane does not anticipate every element of the previously pending and presently amended claims.

Requirements to Establish Anticipation

The MPEP prescribes that, “when evaluating the scope of a claim, *every limitation in the claim must be considered*,” (§ 2106 II(C), emphasis added) and, “*All words in a claim must be considered in judging the patentability of that claim against the prior art*.” (§ 2143.03, emphasis added). Applicant submits that the pending rejection has failed to consider “every limitation in the claim” and “[a]ll words in [the] claim” in judging the patentability of the claim against the prior art by mischaracterizing claim elements and/or over-generalizing the applied reference(s). As a consequence, has failed to establish a case of anticipation. 35 U.S.C. § 102.

Missing Claim Element(s)

Applicant submits Kane does **not** discuss, and is in fact missing at least the following elements as recited, *inter alia*, in amended independent claim 1:

A processor-implemented trading method, comprising:

- ...
 - loading the selected trade implementation plug-in in a logic engine;
 - loading a market-specific plug-in in the logic engine;
- ...
 - determining an order strategy based on the plurality of trade parameters by executing the trade implementation plug-in and the market-specific plug-in;

The Office Action asserts the previously pending claimed elements are shown in Kane (Abstract and col. 3, lines 30-34). Furthermore, in the pending Office Action, in response to Applicant's arguments in the Amendment/Response dated April 6, 2009, the Examiner simply cuts and pastes Kane's discussion in col. 3, lines 30-34 without further clarification of its alleged relevance. (Office Action, pg. 6, Response to Arguments). Applicant respectfully traverses these rejections and submits that the Examiner has mischaracterized Kane as applied to the claims.

Contrary to the Office Action's assertions, Applicant submits that in the Examiner's cut/paste cited portion, Kane discusses *long/short strategy for buying or selling of securities based on majority rule*. For example, Applicant notes that Kane discusses automated agents who "represent different buy and sell rules" (col. 5, lines 10-11):

... a decision logic including a repository for storing a plurality of buy/sell rules for buying and selling securities ... the decision logic having a plurality of agents, each operating in response to a respective buy/sell rule for generating buy/sell orders for securities ... (Kane, col. 3, lines 30-33).

Applicant further notes that Kane's method includes the following steps for "affirming" an order as a "buy short" order:

- (a) issuing to all agents a tentative buy short/sell long order for a given security;
 - (b) soliciting from all agents a tentative buy short decision for the given security;
 - (c) affirming with the decision logic the buy short decision if a majority of the agents have indicated an affirmative buy short decision; and
 - (d) executing with an executing logic the affirmed buy short order.
- (Kane, col. 3, lines 36-45).

After Kane's logic affirms "buy short order" based on the majority vote, Kane discusses monitoring to evaluate rates of success and failure of each agent decision:

- (a) monitoring for a given length of time the security bought on the buy short order; and
- (b) when the security has accrued value sufficiently to at least cover the short buy plus a given profit, issuing a buy long order for the security (Kane, col. 3, lines 47-58).

As such, Applicant submits that Kane's method of buy/sell based on automated agent implemented logic/majority vote is different from at least the claimed "trade implementation plug-in" or the "market-specific plug-in," let alone the claimed "... loading the selected trade implementation plug-in in a logic engine ... loading a market-specific plug-in in the logic engine [and] determining an order strategy based on the plurality of trade parameters by executing the trade implementation plug-in and the market-specific plug-in..." as recited in pending independent claim 1.

For at least the reasons discussed above, Applicant submits that the pending rejection has mischaracterized the language of the claim elements and/or the applied reference and, thus, has not established a case of anticipation. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejections and allowance of the claims.

Should the Examiner maintain the rejection, Applicant respectfully requests that the Examiner provide specific citations and explanations describing how each and every element of the pending claims are allegedly anticipated by the cited reference, providing indications of specific, alleged correspondences between claim elements and cited portions of the applied reference; more specifically, Applicant respectfully requests additional clarification as to how and specifically what in Kane anticipates the claimed "trade implementation plug-in," "market-specific plug-in" and "determining an order strategy based on the plurality of trade parameters by executing the trade implementation plug-in and the market-specific plug-in."

Moreover, Applicant submits claims 2, 3 and 5, which depend, directly or indirectly, from independent claim 1, are all patentable over Kane for at least similar reasons as discussed above when identifying deficiencies in the Office Action's application of Kane with regard to independent claim 1. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejections and allowance of the claims.

Claim Rejections - 35 U.S.C. § 103

The Office Action has rejected claims 4, 6 and 15-17 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kane, US Patent No. 6,317,728 (hereinafter "Kane"), and in further view of Microsoft Computer Dictionary 5th Edition, pg. 345 (hereinafter "MCD"). Applicant respectfully traverses these rejections and submits that the references of record do not discuss or render obvious the noted claims.

Requirements to Establish Prima Facie Obviousness

The Supreme Court in *Graham v. John Deere Co. of Kansas City* prescribed that a *prima facie* showing of obviousness under 35 U.S.C. § 103 requires that, "the obviousness or nonobviousness of the subject matter [be] determined," and details further requirements, commonly referred to as "Graham factors," which include that "[1] the scope and content of the prior art [be] determined, [2] differences between the prior art and the claims at issue [be] ascertained, and [3] the level of ordinary skill in the pertinent art [be] resolved." *Graham*, 383 U.S. at 1, 17 (1966). To comply with the Graham factors, as introduced in

Graham and reaffirmed in *KSR Intern. Co. v. Teleflex Inc.*¹, MPEP § 706.02(j) prescribes that a rejection under 35 U.S.C. § 103 should set forth:

- (A) the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate;
- (B) the difference or differences in the claim over the applied reference(s);
- (C) the proposed modification of the applied reference(s) to arrive at the claimed subject matter; and
- (D) an explanation as to why the claimed invention would have been obvious to one of ordinary skill in the art at the time the invention was made.

As with this Office Action, when the Examiner mischaracterizes and/or provides references that are missing claimed elements, then the Examiner has failed to fulfill MPEP § 706.02(j) requirements **(A) and (B)** and as a consequence, has failed to establish a *prima facie* case of obviousness.

Missing Claim Element(s)

Applicant submits the cited references (taken alone or in combination) do **not** discuss, do **not** render obvious, and are in fact missing at least the following element(s) as recited, *inter alia*, in previously pending and amended independent claim 6:

The method for computerized trading comprising:

- ...
 - loading the selected trade implementation plug-in in a logic engine;
 - loading a market-specific plug-in in the logic engine;
- ...
 - determining an order strategy based on the plurality of trade parameters by executing the trade implementation plug-in

¹ The “[Graham] factors continue to define the inquiry.” 550 U.S. 398 (2007).

and the market-specific plug-in to deconstruct the ComplexOrder
into Events and Actions ...

The Office Action asserts the previously pending claim elements of independent claim 6 are obvious in view of Kane's abstract and discussion in col. 3, lines 30-34 and MCD's definition of "modular programming." (Office Action, pg. 5).

Applicant respectfully traverses the Examiner's assertions and maintains that Kane does not discuss or render obvious the claimed "trade implementation plug-in" or "market-specific plug-in" or "determining an order strategy based on the plurality of trade parameters by executing the trade implementation plug-in and the market-specific plug-in ..." for at least similar reasons as discussed above in the "Claim Rejections - 35 U.S.C. § 102" section.

The MPEP prescribes that, "when evaluating the scope of a claim, *every limitation in the claim must be considered*," (§ 2106 II(C), emphasis added) and, "*All words in a claim must be considered in judging the patentability of that claim against the prior art.*" (§ 2143.03, emphasis added). By identifying dictionary terms such as "modular design" and "modular programming" and making unsupported, mere conclusory statements, Applicant submits that the Examiner has failed to consider the claim as a whole per MPEP § 2106 (II)(C) and thus, has failed to establish a *prima facie* case of obviousness. Accordingly, Applicant requests reconsideration and withdrawal of these rejections, and allowance of the claim.

Should the Examiner maintain the rejection, Applicant respectfully requests that the Examiner provide specific citations and explanations with particularity as required by the MPEP describing how each and every element of the pending claims are allegedly rendered obvious by the cited reference, providing indications of specific, alleged correspondences between claim elements and cited portions of the applied reference. More specifically,

Applicant respectfully requests additional clarification as to what in the applied references he believes is allegedly analogous to the claimed "ComplexOrder," and "determining an order strategy based on the plurality of trade parameters by executing the trade implementation plug-in and the market-specific plug-in to deconstruct the ComplexOrder into Events and Actions ..." as recited in pending independent claim 6.

Moreover, Applicant notes that rejected claims 15-17 depend, directly or indirectly, from independent claims 1 and 6. However, the Examiner's rejection merely indicates "Re claims 6, 15-17" and applies Kane to the claim elements of independent claim 6 (See Office Action, pg. 5) without addressing any of the claim elements included in claims 15-17. The MPEP prescribes that, "when evaluating the scope of a claim, *every limitation in the claim must be considered*," [§ 2106 II(C), emphasis added] and, "*All words in a claim must be considered in judging the patentability of that claim against the prior art*." [§ 2143.03, emphasis added]. Applicant submits that by ignoring entire claims (15, 16 and 17), the pending rejection has not put forth a *prima facie* case of obviousness and, accordingly, requests reconsideration and withdrawal of the rejections and allowance of the claims.

Should the Examiner maintain the rejection, Applicant respectfully requests that the Examiner provide specific citations and explanations describing how each and every element of the pending claims are allegedly rendered obvious by the cited reference, providing indications of specific, alleged correspondences between claim elements and cited portions of the applied reference.

CONCLUSION

Applicant asserts that the above remarks, which distinguish the claims over the cited reference(s), pertained only to noted claim element portions. These remarks are believed to be sufficient to overcome the prior art to this Office Action (and/or any previous office action(s)) (hereinafter "Office Action(s)"). While many other claim elements and/or bases for rejection were not discussed, as they have been rendered moot based on the above amendments and/or remarks, Applicant asserts that all such remaining and not discussed claim elements and/or bases for rejection, all, also are distinguished over the prior art, and Applicant reserves the opportunity to more particularly traverse, remark and/or distinguish over any such remaining claim elements and/or bases for rejection at a later time, should it become necessary. Further, any remarks that were made in response to the Office Action(s)' objection and/or rejection as to any one claim element, and which may have been re-asserted as applying to other Office Action(s) objection(s) and/or rejection(s) as to any other claim element(s), any such re-assertion(s) of remarks are not meant to imply that there is commonality about the structure, functionality, means, operation, and/or scope of any of the claim element(s), and no such commonality is admitted as a consequence of any such re-assertion(s) of remarks. Consequently, the reference(s) cited the Office Action(s) do not result in the claimed invention(s), there was/is no motivation, basis and/or rationale for such a combination of references (i.e., cited references do not teach, read on, suggest, or result in the claimed invention(s)), and the claimed invention(s) are not admitted to be prior art. Also, Applicant does not accept, admit, and/or concede to any assertions, (mis)characterizations (e.g., of claims, references, and/or otherwise), and/or Official Notice(s) in the Office

Action(s). As such, Applicant does not concede that any claim element(s) have been anticipated and/or rendered obvious by any of the cited reference(s) and/or any Official Notice in the Office Action(s). Thus, the Applicant respectfully submits that the supporting remarks and claimed inventions, claims 1-6 and 15-17, all: overcome all rejections and/or objections as noted in the Office Action(s), are patentable over and discriminated from the cited reference(s), and are in a condition for allowance. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection(s) and/or objection(s), and allowance of all claims.

Authorization

Applicant hereby authorizes and requests that the Commissioner charge any additional fees that may be required for consideration of this and/or any accompanying and/or necessary papers to Deposit Account No. 03-1240, Order No. 17209-341. In the event that an extension of time is required (or which may be required in addition to that requested in a petition for an extension of time), Applicant requests that the Commissioner grant a petition for an extension of time required to make this response timely, and, Applicant hereby authorizes and requests that the Commissioner charge any fee or credit any overpayment for such an extension of time to Deposit Account No. 03-1240, Order No. 17209-341.

In the event that a telephone conference would facilitate examination of the application in any way, Applicant invites the Examiner to contact the undersigned at the number provided.

Respectfully submitted,
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